

### **REMARKS**

Claims 1-25, 37-71, 85, and 92 are pending. All pending claims have been amended to remove a typographical error. Claims 1 and 85 have been amended to better claim Applicants' invention. No new matter has been added.

Applicant notes the Examiner's thorough review of the claims, and acknowledgement that Claims 14, 18, 21, 46, 47, 50-52, 55 and 66 are drawn to patentable subject matter, and would be allowable if re-written to incorporate those elements from the claims from which the claim depend.

Applicants address each of the objections and rejections in the order in which they appear in the Action.

#### **I. Claim Objection**

The Action objects to the informalities of Claim 85. Applicants have amended Claim 85 to correct the typographical error and respectfully request that this objection be withdrawn.

#### **II. Claim rejection over 102(b) Overcome**

Claims 1-13, 15-17, 19, 20, 22-25, 27-45, 48, 49, 53, 54, 56-65, 67-71, 85, and 92 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,085,351 (Martin). Applicants respectfully traverse this rejection.

Claim 1 has been amended to include the following:

“the fluid dispenser has a rest state, and the metering chamber has substantially no volume in the rest state.”

Basis for this amendment is found in paragraphs [0038] & [0039] of the published application, US 2008/0149098. The effect of this addition is found at paragraph [0041];

“Thus, the inner volume 71 of the container unit 58 is completely sealed in the rest state of the fluid dispenser 1 inasmuch as contaminants, such as air and moisture, cannot enter the container inner volume 71 at its lower end 65, due to the sealing piston 69, nor at the upper end 61 by virtue of the position of the transfer ports 55a, 55b between the sealing rings 39, 41, the collapsed state of the metering chamber 73 and the closed position of the outlet valve control member 35. Of course, it will be appreciated that the components of the fluid dispenser 1 are made from fluid impervious materials.”

Claim 1, as amended, is not anticipated by Martin. In particular, Martin does not disclose a fluid dispenser having a rest state, and that the fluid dispenser further comprises a metering chamber which has substantially no volume in that rest state. There is no teaching, suggestion or motivation in Martin to modify the metering chamber to have substantially no volume in the rest state. In particular, such a modification would result in an inoperative device, as the device of Martin relies upon the pressurised bladder filling the metering chamber when in said rest state (see column 3, lines 63-65). A metering chamber having substantially no volume in this rest state would not fill, hence the device would be inoperative.

Furthermore, one of ordinary skill in the art would not modify the device of Martin so that the ‘rest state’ comprises the dispensing position shown in figure 2, and described at column 3, line 65 to column 4, line 11. Such an arrangement would leave the metering chamber exposed to elements via the dispensing outlet (item 46).

### **III. Double Patenting Rejection Overcome**

Claims 1-25, 37-71, 85, and 92 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24, 36-69, 85, and 92 of copending Application No. 10/597,678; claims 1-22, 34-69, 83, and 90 of copending Application No. 10/597,683; claims 1-37 of copending Application No. 10/597,692; claims 1-46 of copending Application No. 10/597,703; and claims 1-24, 36-69, 85, and 92 of copending Application No. 10/597,624. Applicants have concurrently

filed a terminal disclaimer. The filing of such terminal disclaimers does not serve as an admission of the propriety of the rejection

**IV. Conclusion**

All claim rejections being addressed in full, Applicants respectfully request the withdrawal of the outstanding objections and rejections and the issuance of a Notice of Allowance. Should the Examiner have any questions regarding the foregoing, Applicants respectfully request that the Examiner contact the undersigned, who can be reached at (919) 483-9995.

Respectfully submitted,

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